

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KANTIN GILL,	:	CIVIL ACTION NO. 1:14-CV-2150
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
C.O. DERRELL ELDER,	:	
	:	
Defendant	:	

ORDER AND JUDGMENT

AND NOW, this 17th day of July, 2015, upon consideration of the report (Doc. 18) of Chief Magistrate Judge Martin C. Carlson, recommending the court grant defendant's motion (Doc. 15) for summary judgment and dismiss plaintiff's single excessive force claim for failure to prosecute this action, see FED. R. CIV. P. 41(b) (permitting court to dismiss lawsuit if "the plaintiff fails to prosecute or to comply with these rules or a court order"), and failure to oppose defendant's motion, see L.R. 7.6 ("Any party who fails [to timely file a brief in opposition] shall be deemed not to oppose such motion."), and further on the merits, and following an independent review of the record, the court in agreement with the Magistrate Judge that plaintiff's failure to participate in this litigation since its commencement in November of 2014, in connection with plaintiff's failure to oppose defendant's instant motion, warrants Rule 41(b) dismissal of the complaint, and further in agreement with the Magistrate Judge that plaintiff's claims are subject to dismissal on the merits, and it appearing that neither party has objected to the report, and

that there is no clear error on the face of the record,¹ see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that the failure to timely object “may result in forfeiture of *de novo* review at the district court level”), it is hereby ORDERED that:

1. The report (Doc. 18) of Chief Magistrate Judge Carlson is ADOPTED.
2. Defendant’s motion (Doc. 15) for summary judgment is GRANTED.
3. Judgment is ENTERED in favor of defendant C.O. Derrell Elder and against plaintiff Kantin Gill.
4. The Clerk of Court is directed to close this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

¹ When parties fail to timely object to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. See Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to *de novo* review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court’s review is conducted under the “plain error” standard); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for “clear error”); Cruz v. Chater, 990 F. Supp. 375, 377 (M.D. Pa. 1998) (holding that the court’s review is limited to ascertaining whether there is “clear error on the face of the record”). The court reviews the Magistrate Judge’s report in according with this Third Circuit directive.